The Solicitors' Journal

Vol. 93 January 15, 1949 No. 3

CONTENTS

CURRENT TOPICS

Sir Wilfrid Nops

THE Central Criminal Court and the City of London have suffered a grievous loss of a charming and kindly servant in the death at the age of sixty-four of Sir WILFRID NOPS, Clerk of the Court and Clerk of the Peace of the City. He had been on the staff of the court for forty years, was called to the Bar thirty-seven years ago, and had held his latest offices since 1929. The grace which his personality lent to the otherwise grim work of the Old Bailey will be remembered for many years to come and will always be an example to his successors.

Miss Margaret Kidd, K.C.

THE honour of being the first lady in the United Kingdom to be called within the Bar has fallen to Miss MARGARET KIDD, of whose career at the Scottish Bar we wrote in these "Topics" on the occasion of her completing twenty-five years as an advocate (92 SOL. J. 487). The many public activities and services rendered by Miss Kidd are thus suitably rewarded, and lawyers south of the Border will wish that hearty congratulations should be tendered to her. A commencement has now been made, nearly thirty years after the Sex Disqualification (Removal) Act, and we Southerners may pardonably conjecture, but not in writing, whose name in England will follow this precedent. We have a lady metropolitan magistrate as well as many among the "great unpaid." When shall we have a lady county court judge, as they have in Sweden (Miss Kerstin Ekecranty, recently appointed at the age of twenty-four), and a lady High Court judge? Finally, is the House of Lords to remain for ever a rampart of male exclusiveness?

The Legal Aid Bills

VIGOROUS opposition to the Legal Aid and Solicitors (Scotland) Bill is contained in an article in the *Scots Law Times* for 25th December, 1948. The burden of the article is an attack on the Rushcliffe Report, which the writer states to be the basis of the whole proposal. "Perhaps it could hardly be expected," the writer states, "that an English Lord Chancellor would follow the logical plan of investigating the complete and well-tried Scottish system first, and ascertaining whether it could not be adopted with any necessary modifications." More serious is the criticism that the Rushcliffe Committee's Report was based on conditions at the date of its appointment in May, 1944, when 60 per cent. of practising solicitors were absent on war service and the total of free facilities was inadequate to meet the then demand (para. 125). A further criticism is that a heavy case is almost invariably against an opponent who can pay expenses, a local authority, a bus company or an industrial concern. The Committee, the writer points out, treated all litigants alike. The Rushcliffe Committee's reasons for their Report, the writer concludes, are now irrelevant, "and it is not unreasonable to suspect that the real motive . . . is to bring the legal profession under control. After all, he who pays the piper calls the tune . . ." Not everyone will agree with these opinions, but it is to be hoped that they will receive serious consideration in the debates both on the English and on the Scottish measures.

The Monopolies and Restrictive Practices Commission

IT is somewhat surprising to find that no solicitor is included among the members of the Commission set up by the Board of Trade under the Monopolies and Restrictive Practices (Inquiry and Control) Act, 1948. The function of the Commission is to investigate matters referred to it under the Act by the Board of Trade (but not to initiate inquiries), and it comprises two lawyers, two civil servants, an accountant, an economist, an industrialist and a trade unionist. In a largely fact-finding body such as this (see s. 6 of the Act of 1948) the solicitor's experience in disentangling relevant information from a complex mass of data ought, one would think, to be invaluable (and indeed this is explicitly recognised by the Board of Trade in another direction by the recent appointment of Sir DOUGLAS GARRETT to investigate the affairs of a company under s. 165 of the Companies Act, 1948). The Chairman of the Commission is Sir ARCHIBALD CARTER, K.C.B., K.C.I.E. It is hoped that the Commission may be in a position to receive references by the beginning of March, but in the meantime correspondence should be addressed to the Assistant Secretary, I.M. 1 Division, Board of Trade, Millbank, S.W.1.

Hilary Law Sittings

THE Hilary Law Sittings commenced on 11th January, 1949. Seven hundred and forty-two actions are set down in the King's Bench Division, compared with 370 for the Hilary Term of 1948; 323 of them are long non-juries and 372 short non-juries (157 and 178 respectively last year). Thirteen cases have been entered in the Commercial List (12 last year) and 4 in a new list called the Revenue List. In the Chancery Division there are 48 non-witness and 114 witness actions (84 and 82 last year) and the total number of causes and

matters is 189 (206 last year). Mr. Justice ROXBURGH will take the 67 companies matters (67 last year). The total in the Divisional Court is 141 (195 last year), consisting of 41 in the Divisional Court List proper (19 last year), 44 in the Revenue List (21 last year) and 1 in the Special Paper (7 last year). There are 50 pensions appeals (a fall of 91), 2 housing appeals and 3 motions for judgment. Two hundred and sixty-five appeals to the Court of Appeal contrast with 298 last year. Of the 258 final appeals 30 are from the Chancery Division (24 last year), 88 from the King's Bench Division (107 last year), 22 in Probate and Divorce (63 last year), 5 in Admiralty (5 last year) and 113 are county court appeals, including 13 workmen's compensation cases (89 and 12 last year).

The Legal Profession as a Court of Appeal

DECISIONS of the courts which deviate from the well-trodden paths of precedent usually set up a murmur of discussion everywhere where lawyers forgather. Articles in legal journals follow, and sometimes a doubtful decision receives proper criticism. "Our court of appeal," said Chief Justice QUA at the Massachusetts Lawyers' Institute (*Massachusetts Law Quarterly*, October, 1948), "is the legal profession. Our corrective influence comes from you, comes from the practising lawyers of the Commonwealth, comes from the professors of law, comes from the writings in the law reviews in general and from actions of other courts, in passing upon what we have done in similar situations . . . So I say that the court is always dependent upon professional opinion for corrective criticism." Those of us who did not realise our responsibilities as a court of appeal should reflect upon them now, as a result of these words of Chief Justice Qua. Judges in this country have occasionally referred with approval to articles in legal journals and have adopted statements of law in modern text-books. We can think of no case in which a decision originally flagellated in a legal article was later reversed, but we do not say it is impossible. We know that judges sometimes have leisure, and, being human, what is more likely than that they should read what ordinary lawyers have to say about the work of their colleagues, and possibly of themselves?

Common Sense, Law and Lay Justices

QUITE rightly, the observations of Mr. Justice STABLE, sitting as Chairman of Merionethshire Quarter Sessions on 4th January, received some publicity. He advised new magistrates to have confidence in themselves and not to imagine they had to be learned in the law. "Do not worry about the law, but use your common sense. If you use it and find that it does not tally with the law, then there must be something wrong with the law, because common sense cannot be wrong." With these general sentiments no experienced lawyer can disagree, for they are obviously the product of experience. The expert lawyer, because of his familiarity with the law, tends to minimise its importance in comparison with common sense, and if he omits to state that in the vast majority of cases the law embodies common sense, misunderstanding can easily be caused in the lay mind. Moreover, it is not uncommon to find that two sensible laymen disagree as to what is the common-sense solution of a problem, and one must beware of resorting to the lowest common denominator in making common sense the final court of appeal. While, therefore, respecting the sincerity and truth in Mr. Justice Stable's utterance, we would urge justices to have a healthy respect for the law, and if what they think is common sense does not tally with the law, to think again, for the chances are that what seems common sense is really uncommon nonsense.

De Minimis?

SOME years ago a heated lawsuit took place before a county court registrar concerning a claim for the recovery of a shilling ball which a child had accidentally thrown into a neighbour's garden. The result, from the legal point of view, was about as important as the lawsuit, and yet one cannot help feeling that from every other point of view the sentiment of the "*de minimis*" maxim is most inappropriate to cases between neighbours. Neighbourliness is an essential part of the good life, but legally enforceable duties to neighbours, or, as the Rent Acts coldly describe them, "adjoining occupiers," are callously circumscribed and limited. All honour, therefore, to the plaintiff in the Maidstone County Court on 7th January, 1949, who sought to extend the scope of a neighbour's legal duties by alleging a novel cause of action. A postman had misdelivered the plaintiff's letter to his next-door neighbour, who had delayed passing it on to the addressee until 11 a.m. the next day. The plaintiff happened to be a valuer and the letter cancelled his instructions to sell an article. Unfortunately he had already sold it and he was obliged to spend 16s. 6d. in recovering it. The amount of his claim against his unneighbourly neighbour was 16s. 6d. The action, as we have hinted, though heroic, was unavailing, for the court held that the defendant was unneighbourly in not redelivering the letter at once, but was under no legal liability to do so. It may safely be conjectured that no legal advice preceded the hearing of this remarkable action, and indeed it is proper that the plaintiff's motive in a case so vital to human morals should be spontaneous and should manifestly be seen to be spontaneous.

"The Constable and the Law"

UNDER the terrifying heading "The Constable and the Law" a writer in the current *Police Review* invites residents of a London suburb to finance an application to the High Court for an injunction to stop motorists "shattering the peace of their suburban night." The defendant, it is urged, should be the proprietor of the cinema at the end of the road. The valiant but mainly unsuccessful attempts of the police to persuade the local bench that motorists parking their cars outside the cinema were guilty of offences of obstruction under reg. 82 of the Motor Vehicles (Construction and Use) Regulations or s. 72 of the Highway Act, 1835, are enthusiastically described in the article, and bitter complaint is made that the justices have held that the 1835 statute cannot apply to the motor traffic of to-day. A further course suggested is a prosecution for breach of the peace on account of "200 self-starters, 400 slammed doors and 800 shrill 'good-nights.'" The police are, it would appear, deeply concerned about the nuisance, but we respectfully express the hope that no appreciable police force is diverted from its urgent tasks of crime prevention and the arrest of criminals in order to quell a slight bustle of motorists after a cinema performance. The police are not short of work, and indeed the Recorder of Bradford, in opening quarter sessions on 4th January, deplored that the police, whose real duty was to prevent crime, had too many other jobs to do. What the civil remedies are is another question, and perhaps residents, or at least those who are lawyers, will study cases like *Inchbald* v. *Robinson* (1869), L.R. 4 Ch. 388, before taking action.

London Crime

LONDON'S crime figures were the subject of a statement on 5th January by Sir HAROLD SCOTT, Metropolitan Commissioner of Police. The present number of crimes of violence, he said, committed largely by young offenders, was due to the shortage of policemen. Indictable offences for the first eleven months of 1948 amounted to 114,475, compared with 115,115 for the corresponding period of 1947. Figures for December, 1948, were also slightly better in comparison, there being a decrease of approximately ninety-three indictable offences. The Commissioner was hopeful as to what could be done if the police force could be brought up to strength. It is 5,000 below its pre-war strength of 20,000, and he said that new recruits will not be forthcoming until houses are provided for them. This numerical inadequacy of the police force has existed for some years and is likely to continue for some years to come. Is it not time that duties not strictly essential to the protection of life and property were ruthlessly pruned and the police force thoroughly reorganised to deal with these, it is to be hoped, interim years of crime and bad housing?

THE COURTS (EMERGENCY POWERS) ACT: THE CASE FOR REPEAL

THE time has come to re-examine the operation of the Courts (Emergency Powers) Act, 1943, and to weigh the arguments for and against its repeal. It is more than eighteen months since this question was raised in the House of Commons, when the Attorney-General expressed the Government's view that there were still many persons in need of the protection of the Act, though consideration was promised of the possibility of some minor relaxation of the controls to which the remedies of creditors are subject. Since then no hint of repeal and no amending legislation has been forthcoming. Presumably the Act is still regarded as a necessary shield of the oppressed. For those who see the community of creditors generally, who are so harsh as to wish to enforce their rights at law, in the colours of a Ralph Nickleby or Fascination Fledgeby, there is no doubt a strong *prima facie* justification for the retention of any obstacle which may stem their onslaught. But what precisely was the nature of the protection which this Act was, in its inception, designed to afford? Is such protection still required? And if not, does the Act serve any other useful purpose to justify the cumbrous and time-wasting machinery in which its operation involves the courts and practitioners?

It is the creditor who must always apply for leave to execute his judgment or exercise his contractual remedy, but in some courts it tends to be forgotten that the onus is squarely upon the debtor to prove circumstances which shall give the court a discretion to withhold the leave applied for. The whole basis of the Act amounts to no more than this, that it protects a person who when he entered into a contract was then able, and could reasonably expect to continue to be able, to meet the obligations he was incurring, but whose expectations have been thwarted by the subsequent operation of "circumstances directly or indirectly attributable to the war." The Act has no other object than to secure to such a person an opportunity of showing the nature of the difficulties in which he has been placed by such supervening circumstances, which may or may not be sufficient to persuade the court to grant him relief. A number of early cases on the Act of 1939 emphasised that the onus was upon the defendant; that that onus was not discharged if it appeared that, irrespective of the outbreak of war, the defendant would not or might not have been able to meet his obligations; and that unless the onus was discharged the court had no discretion to withhold the leave for which the plaintiff asked (*A.* v. *B.* [1940] 1 K.B 217; *Re Griffiths, Re Davies' Contract* [1940] 1 All E.R. 528; *Tomley* v. *Gower and McAdam* [1939] 4 All E.R. 460). These cases concerned pre-war contracts. By s. 2 of the Act of 1943, which extends the operation of the Act to contracts entered into since the beginning of the war, it is clearly provided that leave can only be withheld if the circumstances producing the debtor's inability are shown to have arisen *since* the date when the contract was entered into. There were also some judicial attempts in the cases cited above, and elsewhere, to frame an extended definition of "circumstances attributable to the war." But the phrase, although lacking in precision, does not seem to suffer from any ambiguity which construction might cure; it seems rather to be one of those cases where the draftsman has necessarily used wide and general terms to comply with wide and general instructions. There should not be any undue difficulty in particular cases in saying whether particular circumstances are "attributable to the war" or not. It must be remembered that the lawyer, in deciding such a question, like any other question concerned with cause and effect, is not applying any logician's theory but a strictly practical test. And this is so notwithstanding the use of the words "directly or indirectly." There must be a line, although perhaps hardly to be drawn by reference to any *a priori* principle, beyond which no visible means of causation between the recent emergency and an individual's financial embarrassment can reasonably be traced.

In how many cases in the year 1949 is it likely that a defendant will be able to show grounds for the exercise of the court's discretion in his favour? Only, it is submitted, in a few rare and isolated instances. Those pre-war contracts which one party has been disabled from carrying out by the kind of war circumstances which the original framers of the emergency legislation must have had in mind must now be an almost exhausted source of litigation. Whether any particular manifestation of the general economic difficulties of the times through which we are now passing could properly be said to be a circumstance attributable to the war within the meaning of the Act might be a nice question for argument. But it is a question which it is hardly necessary to pursue, for those breaches of contract which now come before the court for the first time must, in the main, arise out of post-war transactions. It will be rare indeed for a defendant to be able to show that, though he was, on entering into a contract either during or since the war, in a position to meet the obligations it imposed upon him, his present inability to do so is attributable to "war circumstances" which have only arisen since the date of the contract.

Now, it may well be said that so long as there is any probability that, even in a small minority of cases, there will be occasion for the courts to afford discretionary protection under the Act, the Act is worth retaining. So far as High Court litigation is concerned, involving considerable sums of money and protracted proceedings, it is apparent that the additional time and cost which the procedure under the Act involves are insignificant. But in the infinitely more numerous class of small matters in the county court where only a few pounds are at stake, it is quite a different story. A number of contractual remedies, otherwise exercisable without the court's intervention, require an originating application for leave. Whenever a defendant has been ordered to make payment by instalments, the successful plaintiff can only apply for the necessary leave to proceed if the defendant falls into arrear. Although under the rules attendance at any court by or on behalf of the plaintiff on the hearing of these separate applications is not imperative, it is generally advisable. In the result the cost of the necessary application is often, in proportion to the amount of the debt to be recovered, considerable. The Act thus adds to the burden of costs ultimately chargeable to the small debtor, affording him, in exchange, the opportunity of making a claim to protection in which he is most unlikely to succeed.

N. C. B.

Divorce Law and Practice

FURTHER NOTES ON CONDONATION

IT will perhaps be remembered that at 92 SOL. J. 213 the effects of the case of *Fearn* v. *Fearn* [1948] 1 All E.R. 459 upon the doctrine of condonation were discussed in some detail. From that case two main propositions emerged (*a*) that words of forgiveness, however strong, will not in themselves constitute condonation, and (*b*) that for condonation to be effective, it must be proved that the party against whom condonation is alleged has reinstated the other spouse into the position that he or she was in before the matrimonial offence was committed. The first proposition depends for its efficacy on the fact that condonation is an absolute bar and not a discretionary bar to a divorce petition and must therefore be proved with a high degree of certainty. The second proposition is the point upon which the main issue in *Fearn* v. *Fearn* turned, and it is with that proposition that this article concerns itself.

In the recent case of *Mackrell* v. *Mackrell* [1948] 2 All E.R. 858 some light was thrown on the doctrine of condonation and a number of authorities were considered, including *Fearn* v. *Fearn*. *Mackrell* v. *Mackrell* seems, at first sight, at any rate, to lay down a somewhat different test by which the question of condonation must be judged, and it is for the purpose of seeing whether that difference is merely superficial or is indeed more fundamental that it is intended to discuss that case here. The facts of *Mackrell* v. *Mackrell* so far as they are material to the present discussion were these: The parties were married in 1925. After 1939 there was no further marital intercourse, and in 1941 they ceased to share the same bedroom as trouble had arisen between them over the husband's attentions to another woman. In 1943 the husband attacked his wife, putting his arms round her neck and swearing at her. Again in 1945 the husband lost his temper and put his hands round her neck with such violence as to leave marks on her neck. The parties continued to live in the same house, but the wife consulted her solicitors with a view to a deed of separation. This proposal was abandoned after a further act of cruelty on 20th October, 1946, when the husband struck the wife violently in the eye. The wife again consulted her solicitors, and on 12th November, 1946, a petition for judicial separation on the ground of cruelty was filed. The wife continued to live in the house during all this time. The husband filed an answer in February of 1947 and the case finally came on for hearing on 3rd May, 1948, when the petition was dismissed on the ground that the wife had condoned the husband's cruelty by living in the house during the period subsequent to the final act of cruelty in October, 1946. The wife appealed and the Court of Appeal upheld her view that she had not condoned the offence. In giving their judgments, each of the three members of the court (Bucknill and Denning, L.JJ., and Harman, J.) brought out a different point. Each of the learned judges looked at the case in a rather different light from his brethren, but in each case the point emphasised was one which warrants study.

Bucknill, L.J., brought out in his judgment an important point upon which the whole case depended. He made it clear that there was a distinction between the period immediately after the final act of cruelty and the issue of the petition, a matter of some three weeks, and the period from the issue of the petition to the hearing of the case some eighteen months later. For, as he pointed out, once the petition had been filed, it was improbable that the wife had forgiven her husband or been reconciled to him merely because she continued to live in the same house with him. The learned lord justice considered that the wife during the later period might well, as she had stated in her evidence, have stayed in the house merely as a means of safeguarding her rights in regard to the house and the matrimonial property, some of which was hers. As his lordship considered that that was a justifiable piece of conduct on the part of the wife it followed that if he was to find condonation in this case the condonation must be during the initial three weeks following the final act of cruelty. This, on the facts, he was unable to do.

It will be seen, therefore, that Bucknill, L.J., decided the case on a question of fact, but Denning, L.J., in his judgment which followed, went into the law in some detail, and it is in this judgment that the main points of interest arise. He first of all pointed out a fact, which not all of us will have noticed, that the Legislature had recognised that it was not impossible for a woman to complain of cruelty whilst she was still living under the same roof as her husband, for in the Summary Jurisdiction (Separation and Maintenance) Act, 1925, s. 1 (1), it was enacted that "an application by a married woman for an order . . . on the ground of cruelty . . . by her husband, may be made notwithstanding that the cruelty . . . complained of has not caused her to leave and live separately and apart from him . . ." This was sufficient to explode any theory that to remain in the same house after the cruelty complained of had been committed was automatically condonation in the same way that a subsequent act of intercourse was automatically treated as a bar to relief. The reason for treating a subsequent act of intercourse as always amounting to condonation was that the effects of that might be most serious for the wife in that she might have a child. No such consideration applied here, indeed rather the opposite, for it might be that the wife would suffer hardship were she to leave the house, as she might have nowhere else to go and, at any rate until an order was made, she might have no means upon which to live. That reasoning made the principle equally applicable to proceedings in the High Court and in courts of summary jurisdiction.

Following this, Denning, L.J., went on to consider upon what principles it was necessary to decide whether on the particular facts of a particular case condonation arose. The learned lord justice took as his basic principle the *dictum* of Lord Chelmsford, L.C., in *Keats* v. *Keats and Montezuma* (1859), 1 Sw. & Tr. 334, at p. 357, where he said "... the forgiveness which is to take away the husband's right to a divorce must not fall short of reconciliation ..." As to what amounts to reconciliation in any particular case, Denning, L.J., said: "Reconciliation does not take place unless and until mutual trust and confidence are restored. It is not to be expected that the parties can ever recapture the mutual devotion which existed when they were first married, but their relationship must be restored by mutual consent to a settled rhythm in which the past offences, if not forgotten, at least no longer rankle and embitter their daily lives." This clearly makes reconciliation the basic element of condonation, whereas in *Fearn* v. *Fearn* the argument was based on the assumption that reinstatement by the innocent of the erring spouse was the root of condonation. At first it may seem that these two tests by which to judge if condonation exists would not lead us up the same path; the results of applying the one test might not always be the same as the results of applying the other test. Indeed that is the view that the learned lord justice himself took, for he said: "The fact that the parties continue to live together in the same house or the fact that the guilty party is reinstated in his or her former position is indeed evidence from which reconciliation may be inferred, but it is by no means conclusive." That clearly pre-supposes that reconciliation and reinstatement are not synonymous in this connection. The result would be that the fact of reinstatement would be merely evidence from which reconciliation might be inferred and it would not necessarily be conclusive evidence. But the meaning that was given to the word reinstatement in *Fearn* v. *Fearn* and the cases upon which that case was decided included not only the fact of reinstatement but also the mental element required to put the erring spouse in the same position physically, and as far as possible mentally, as he or she was before. It is respectfully submitted that the two words in the sense that they have been used when applied to the law of condonation are virtually the same.

A further point which might have to be considered as evidence of reconciliation is the time for which the parties live together after the offence has been committed. It is upon this question of the time that they lived together that *Mackrell* v. *Mackrell* differs from the case of *Wilmot* v. *Wilmot and Martin* [1948] 2 All E.R. 123, where a husband was held to have condoned his wife's adultery where after he had learnt of it he continued to live with her, without intercourse, for a period of some six months without taking any action at all. In the *Mackrell* case, the period of three weeks was a reasonable time for the wife to take to consider her next step.

In conclusion it may be said that Harman, J., decided the case on the basis that reinstatement was the fundamental requirement; he held that here there was no proper reinstatement until the wife had had time to consider her position carefully. In this case she had considered her position and decided to bring the action, so it could not be said that she had reinstated the husband. Harman, J., was thus taking the older view of reinstatement referred to above, as opposed to that held by Denning, L.J.

P. W. M.

A Conveyancer's Diary

THE NATIONAL CONDITIONS OF SALE

I HAD hardly had time to write a few notes on the 14th edition of the National Conditions (92 SOL. J. 597) when a new edition was issued. The main purpose of this latest edition, as the explanatory memorandum points out, is to elaborate the provisions relating to town and country planning, but the opportunity has been taken to incorporate certain other suggestions made by those who use these conditions. The final result is a great improvement on the last edition, which itself contained some very useful, and in some cases necessary, amendments of its predecessor.

The memorandum issued with the new conditions draws attention to all the changes made since the last edition, but since these conditions are so widely used, not only by the profession but by auctioneers and estate agents, I have no hesitation in adding a few observations of my own to the necessarily brief notes of the memorandum.

I imagine that the very much fuller treatment given to town and country planning matters will be generally welcomed. The treatment accorded this subject in the new edition consists of a completely new general condition (No. 14) and two special conditions which will, of course, require completion by the person using the print. One of the special conditions (No. 11) deals with the right to receive a depreciation payment out of the £300 million fund, according as this right is retained by the vendor or assigned to the purchaser; and para. (5) of cl. 14 binds the vendor, in the latter case, at the purchaser's request and cost to support the purchaser's claim by any action which may be necessary in the circumstances. A more substantial matter is dealt with in the other new special condition (No. 10) which provides that " the property is sold on the footing that the permitted use thereof " is either the use specified in the particulars of sale or the use specified by this condition when it is completed by the insertion of a description of the appropriate use. An ancillary provision is contained in para. (1) of cl. 14 which (with a consequential amendment to the existing cl. 7 (6)) permits the purchaser to deliver, with his objections and requisitions on title, requisitions concerning the permitted use of the property, and binds the vendor to answer such requisitions.

Up to this point these new matters are in no way revolutionary and make no change of substance in conveyancing practice; it is obviously useful to gain all the information that is possible about the user of any property nowadays, since such information will almost certainly be asked for on a future sale. But cl. 14 (2) provides that where a use has been specified as a permitted use and it appears, before actual completion, that such a use is not a permitted use of the property for the purposes of the Act of 1947, the purchaser is at liberty to rescind the contract by giving notice to that effect. In that event the vendor's liability is limited to refunding the deposit, without interest or costs of investigating title, a salutary provision which will minimise the risk of a purchaser raising purely technical objections with a view to getting out of a bargain which on reconsideration he no longer wishes to adhere to.

It may be noted that the effect of these provisions concerning permitted use is, broadly speaking, to render the contract voidable in suitable circumstances before actual completion. Once the contract is completed and merged in the conveyance, these provisions automatically disappear; and it is submitted that there is nothing in these conditions to cause permitted use to be made a matter of title (or, as I prefer to put it, to be equated to matters of title), or to entitle a purchaser to any reference to permitted use, as such, in his conveyance. The conservative school of practitioners (to which, in this instance, I am happy to own allegiance) will applaud the form of these conditions, which protect the interests of both parties on a point on which it is not easy to strike a balance, and yet introduce no unnecessary novelties into the business.

The other town planning provisions are cl. 14 (3), whereby the property is expressed as not, to the knowledge of the vendor, subject to any charges or other matters arising under the Act of 1947 (unless expressly excepted) and as sold subject thereto, and cl. 14 (6), which obliges the vendor to covenant, at the purchaser's request, to supply information to the latter in certain cases. The existence of cl. 14 (3) makes it imperative for the vendor to disclose such matters as current enforcement notices. A marginal note at the foot of the space left for special conditions serves as a reminder of the necessity of disclosure in this respect.

There is yet another completely new condition which confers on the purchaser a right to rescind before completion. This is cl. 26, which provides that where the property is sold with vacant possession, the service by a competent authority of a valid notice to requisition the whole or any part of the property, or the requisitioning thereof by such an authority, entitles the purchaser to rescind the contract. The right is exercisable by notice, and the liabilities of the parties if the right is exercised are defined. The absence of a standard clause dealing with the possibility of requisitioning was a notable omission in previous editions of the National Conditions, and the inclusion of such a clause now is undoubtedly a convenience. The clause seems to be well drawn so as to cover the various possibilities that such decisions as *Blackpool Corporation* v. *Locker* [1948] 1 K.B. 349 have revealed.

With the addition of cll. 14 and 26 there are now three separate provisions in the conditions conferring a right to rescind, viz., the purchaser's rights just discussed, and the old-established right of the vendor to rescind in the event of the purchaser insisting on any objection or requisition which the vendor is *bona fide* unable or unwilling to remove or comply with (cl. 7). In addition the conditions provide for the somewhat similar right of the vendor to resell in the event of the purchaser's neglect or failure to complete (cl. 25).

This last-mentioned clause calls for some comment in connection with cl. 6 (2). My readers will recall that cl. 6 was introduced into the last edition to deal with the now common situation of the purchaser being let into possession before the completion of the sale, and cl. 6 (2), as originally drawn, provided that on discharge or rescission of the contract, possession of the property in proper repair should forthwith be given up to the vendor. In the wording of this clause there was the possibility of confusion, as others besides myself doubtless found. In speaking of the words " discharge or rescission " in cl. 6 (2), I wrote in this " Diary ": " Clause [25 (1)] provides that if the purchaser fails to complete his purchase in accordance with the conditions, the deposit will become forfeit and the vendor may resell the property. If the vendor resells under this clause he necessarily affirms the contract and the contract cannot, it is submitted, be said to be discharged . . . It is, therefore, apparently necessary for a vendor who wishes to take advantage of [cl. 25] to serve some form of notice on a purchaser in possession in order that the premises shall be vacated, and reliance should not be placed on the automatic provisions of cl. 6 (2) in such a case."

The position has now been made completely clear by the addition of a few words to cl. 6 (2), which now reads:—

> " Upon discharge or rescission of the contract, or upon receipt of written notice from the vendor of his intention to resell the property under the power in that behalf hereinafter contained, a purchaser in possession shall forthwith give up possession of the property to the vendor in proper repair and condition."

This is the last of the substantial changes made in this edition of the conditions which, taken all in all, is an undoubted improvement on the edition which it supersedes. "A B C"

Landlord and Tenant Notebook

ASSIGNMENT OF CONTROLLED TENANCY

THE Landlord and Tenant (Rent Control) Bill, which was the subject of last week's "Notebook," has also been the subject of strong criticism expressed in the form of a recent letter to *The Times*. Both sins of commission and omission were charged, and among the latter was the failure to prohibit or restrict the right of a protected contractual tenant to receive consideration for an assignment of the residue of his term.

That the provisions concerning what is popularly called "key money" do not affect assignments was established by *Mason, Herring and Brooks* v. *Harris* [1921] 1 K.B. 653. The plaintiffs in that case were estate agents who, acting for a tenant of a controlled flat with some five years of a seven-year term to run, had negotiated an assignment to the defendant in consideration of a payment of £75. The action was on a cheque drawn for a slightly larger amount (to include some other items) and stopped by the defendant on the ground that he had discovered certain facts which in his opinion made it inequitable that he should pay as much as £75 for the lease. But at the hearing argument centred round the correct interpretation of s. 8 (1) of the Rent, etc. (Restrictions) Act, 1920: a person shall not, as a condition of the grant, renewal or continuance of a tenancy, require the payment of any premium or other like sum or the giving of any pecuniary consideration in addition to the rent. Despite diligent research by the defence, unearthing such authority as that of Sheppard's Touchstone on the meaning of "grant"—he that doth give, or sell, doth grant also—Shearman, J., held that in the subsection the word referred to the creation of a tenancy. The learned judge made no mention of the plaintiff's trump card, produced at the reply stage, which invoked the circumstance that the following subsection made contravention of subs. (1) a criminal offence. This consideration did, however, play a decisive part in *Remmington* v. *Larchin* [1921] 3 K.B. 404 (C.A.), in which the plaintiff sued in vain for the return of money paid to a former tenant as consideration for his giving up his tenancy and (apparently) procuring the grant of the plaintiff's (the landlord not being aware of the bargain).

It has, of course, always been a source of understandable annoyance to landlords of controlled property that the Acts deprived them of power to do more than gnash their teeth while their tenants made a good thing out of protection. To a limited extent, this suffering was alleviated by such enactments as s. 7 of the Rent, etc. (Restrictions) Act, 1923, which introduced a right to increase rent on sub-letting part of the dwelling-house (not easy to establish: many tenants were quick to appreciate the difference between a sub-tenant and a lodger; also, not applicable to 1939 control) and s. 4 of the Rent, etc., Restrictions (Amendment) Act, 1933, which added sub-letting at an excessive rent to the grounds of possession and imposed an obligation on tenants to give particulars of any sub-letting. And *Keeves* v. *Dean, Nunn* v. *Pellegrini* [1924] 1 K.B. 685 (C.A.), demonstrating that a statutory tenancy was incapable of voluntary assignment, also reduced the tenants' scope. It might have been thought that after that decision landlords would have taken to granting tenancies of the shortest possible duration; but more recent decisions have shown that on the death of a protected tenant the landlord may well be in a better position if the tenancy is a contractual one than if it is a statutory one. In the latter case a young and healthy member of the family who was residing with the deceased may take his place and occupy it for a long time; while if the tenancy was contractual, the landlord may be in a strong position if a devisee does not occupy the dwelling or if, on an intestacy, the administrator does not occupy it (*Thynne* v. *Salmon* (1948), 92 SOL. J. 83 (C.A.)) or the landlord serves a notice to quit on the President of the Probate Division before letters of administration are taken out (*Smith* v. *Mather* (1948), 92 SOL. J. 231 (C.A.)) (see 92 SOL. J. 672).

But there is one thing which landlords of controlled property can do, and the advantages of which they seem to be slow to realise: namely, restrict alienation. The shortage which is responsible for the Acts' existence makes refusal of an agreement containing even an absolute prohibition unlikely; but even the usual qualified covenant may, as has been recently shown by the decision in *Swanson* v. *Forton* (1948), 92 SOL. J. 731 (C.A.), serve the purpose.

In *Re Swanson's Agreement* (1947), 62 T.L.R. 719; 90 SOL. J. 643, which the new decision has overruled on this point, Evershed, J., regarded the question whether refusal of consent was reasonable as one whether the landlord might refuse it in order to obtain for himself such advantages as might be obtained in the way of getting actual possession. So approached, the question fairly invited the answer "no." This authority was distinguished in *Lee* v. *K. Carter, Ltd.* (1948), 92 SOL. J. 586 (C.A.), in which the tenants were a limited company, the premises occupied by one of their directors, and consent sought to assign to that director: the effect would be to confer protection not hitherto enjoyed. But, while emphasising that the observations of Evershed, J., in *Re Swanson's Agreement* were essentially made *obiter*, Tucker, L.J., did not express disapproval; rather the reverse. (For a discussion of these two cases, see 92 SOL. J. 615.)

At that point it looked as if the test were simply this: if the grantee of the tenancy be a natural person, it is unreasonable to refuse consent to an assignment of the term, for the landlord will be put in no worse position; but if the original tenant be a corporation, consent would bring into being rights not enjoyed, so may reasonably be refused. It might have been possible to sub-divide the former class by reference to whether when the grant was made the premises were within the Acts: a landlord who lets controlled property must be an optimist if he expects to recover possession when the term ends, while one who let decontrolled or uncontrolled premises before September, 1939, may be said to have been taken by surprise.

However, *Swanson* v. *Forton* makes it unlikely that this distinction will ever be drawn. A tenant of a controlled dwelling-house let under an agreement restricting alienation and containing a forfeiture clause covering all breaches applied to the plaintiff landlord for consent to assign to a respectable and responsible person. The applicant was not in actual possession. The landlord did not want vacant possession. The term had only a couple of weeks to run and the plaintiff refused consent, in spite of which the assignment was carried out. The action was against assignor and assignee, asking for damages and a declaration that consent had not been unreasonably held against the one, possession against the other. As no forfeiture notice had been served (necessary in the case of breach of covenant against alienation since the Law of Property Act, 1925, was passed) and an assignment in breach of covenant is valid in itself (see *Paul* v. *Nurse* (1828), 8 B. & C. 486), Roxburgh, J., dismissed the action against the assignee. The landlord did not appeal against this part of the decision, but the learned judge also held, presumably on the authority of *Re Swanson's Agreement*, that the refusal of consent had been unreasonable.

In the Court of Appeal the problem was approached from this angle: the tenant was attempting not only to assign the last few days, but also to confer on the assignee the right to the protection of the Rent Acts. In these circumstances refusal was not unreasonable. Evershed, L.J., concurred with the judgment and though it overruled his own *dicta* in *Re Swanson's Agreement* it does not appear that either the fact that the assignor was non-resident and thus not enjoying

or about to enjoy protection or the fact that the landlord did not want possession herself was made an essential consideration. Nevertheless, it is as well to bear in mind that the courts, when dealing with actions on this type of covenant, frequently remind us that no two cases are exactly alike.

AGRICULTURAL LAND TRIBUNAL PROCEDURE

When Pt. III of the Agriculture Act, 1947, came into force on 1st March of last year, a number of regulations made by the Minister of Agriculture and Fisheries under the Act came into force too, and these were kept in force when the Part concerned was repealed and re-enacted as the Agricultural Holdings Act, 1948. Among them was the Agriculture (Procedure of Agricultural Land Tribunals) Order, 1948, some reference to which was made in the "Notebook" of 27th March, 1948 (92 SOL. J. 177). In December, the attention of the Department having presumably been drawn to defects in the nature of *casus omissi*, it issued the Agriculture (Procedure of Agricultural Land Tribunals) (No. 2) Order, 1948. While the additional provisions will not affect many people, their content is of some importance.

Under the Act, there are occasions when the decision of a County Agricultural Executive Committee may be appealed against by referring it to the Agricultural Land Tribunal; and, while, say, in the case of an application for a certificate of bad husbandry by a landlord intending to give notice to quit it is provided that the tenant should have an opportunity of making representations (s. 27 (2)), there was nothing to entitle a successful landlord to be heard on the tenant appealing to the Tribunal. Again, under the Agriculture (Control of Notices to Quit) Regulations, 1948, sub-tenants have in some circumstances a right to take part in the proceedings before the C.A.E.C.

What the Agriculture (Procedure of Agricultural Land Tribunals) (No. 2) Order, 1948, has provided or ensured is that any person who availed himself of his right to make representations to the committee shall be served with a copy of the applicant-appellant's request for a reference to the Tribunal and copies of documentary evidence and be duly notified of the hearing. Thus, persons affected by the outcome of what is in theory a dispute between someone else and a Government Department have been given a *locus standi*.

R. B.

HERE AND THERE

BACK TO NORMAL

THE chief feature of this budding Term of good St. Hilary is that there is no Tribunal sitting week after week at Church House in the City of Westminster. The learned and eloquent seekers after truth are restored to the bosoms of their anxious and sorrowing clerks and to clients who will lead them into more familiar paths and set them more conventional problems. No longer, a spectacle to angels and to newspaper reporters, will they form the cast in London's most popular entertainment, passing through the antechamber in which the inscribed dome daily demanded of them with Scriptural severity: "Where shall wisdom be found?" and itself answered: "The fear of the Lord that is wisdom and to depart from evil is understanding." In the pursuit of wisdom each has contributed his quota to the million or so words recorded by the shorthand writers for the consideration of the learned Commissioners. Some, like Mr. Lloyd-Jones, have drawn from the cellars of their erudition rare vintage words like "fructicate" which is not an illegitimate hybrid of "fructify" and "eventuate" but a fine old piece of Restoration English (temp. 1663, *vide* O.E.D.). The absence from the Temple's courts of so many high priests gave to some acolytes whose candles normally glow with a somewhat more subdued light (albeit with purest ray serene) good opportunity to officiate in their own right. Junior men in chambers got their chances and occasionally a strong-minded pupil, having been granted a hasty early morning glimpse of his master's mind on a set of papers, would hasten down to Church House to announce that he himself had formed a different conclusion and hammer out an agreed opinion in whispered conference while the tides and currents of the evidence and argument eddied around them. To be caught up as counsel in such a case, however considerable the publicity, has always been a blessing greeted by the Bar with strictly modified rapture. The dislocation of normal practice is incalculable. Do you remember Bowen's verses on his plight and Mathew's in the interminable *Tichborne* case?:—

Amid the case that never ends,
We sat and held a brief,
Mathew and I, a pair of friends,
And one a withered leaf.

"And Mathew," said I, "let us talk,
Amid this noisy scene,
Of the old days in King's Bench Walk,
When you and I were green."

"My friend," said Mathew, "all is done—
A withered leaf am I;
Last Guildhall sittings there were none
Left so completely dry.

But I, since first this case began,
Sit here for ever chained;
No one consults me and by none
Am I enough retained.

My faithful clerk and I are short
Of cash; he now foresees
A sad old age—some County Court
Far from the Common Pleas."

THOSE WHO INQUIRE

ARE Irishmen regarded as having a particular talent for Tribunals of Inquiry? In *l'affaire* J. H. Thomas in 1936 the Grand Inquirer was Porter, J., now Baron Porter of Longfield in the County of Tyrone. It is not always remembered that his paternal origins lay in the North of Ireland before a migration across St. George's Channel gave him a firm hereditary link with Cambridge. As for the present inquiry, let it be recalled, lest any be in doubt on the matter, that Lynskey, J., is an Irishman and a Roman Catholic. The name is a rarer form of Lynch—rarer because more closely following the ancient Gaelic name from which they are both derived. You will stumble across it occasionally in the Irish Law Reports (e.g., *Lynskey* v. *Handcock* (1843), 5 Ir. E. R. 403) and in another sphere another of the clan achieved some celebrity as a singer. The Lynskeys flourish particularly in Galway but it is via Liverpool that George Justin Lynskey has travelled to the Bench of the High Court of Justice. His father George Jeremy Lynskey practised there as a solicitor, made his mark in local politics as leader of the Irish Nationalist Party there and eventually became an alderman of the city. The future judge, before his call to the Bar by the Inner Temple in 1920, himself practised in the family firm from 1910. Those were great days, by the account of those who lived them, when the family circle was as famous for the Irish warmth of its hospitality as the firm of J. G. Lynskey & Son for its rigid integrity. Of the other members of the Tribunal, Russell Vick, K.C., is a North of England Englishman, while Upjohn, K.C., through his famous father, is a South Wales Welshman. What we are destined to hear when the triple oracle speaks we know not nor is it proper to conjecture, but the publishing world, spurred by the phenomenal popularity of the serial publication in the evening Press, has bestirred itself to good purpose with intelligent anticipation. Sir Patrick Hastings, K.C., already has a book on the subject well under way, while, outside the Temple, a London journalist, Wilfrid March, announces a slim volume of some 130 pages for some date "approximately two weeks after the result." Whatever the findings of the Tribunal as regards particular individuals, the published evidence seems to indicate that little has changed in human affairs since Hilaire Belloc many years ago penned that immortal epigram:

"The accursed power that stands on Privilege
(And goes with Women and Champagne and Bridge)
Broke—and Democracy resumed her reign
(Which goes with Bridge and Women and Champagne)."

Perhaps bridge has declined a little in favour.

RICHARD ROE

FELIS DOMESTICA

THE case of *Winman* v. *Winman* (1948), 92 SOL. J. 688, contains *dicta* which, though *obiter*, will deal a severe blow at the cherished feelings of many worthy people. The appellant wife had, in 1942, "taken to keeping cats, and according to the husband she had at that time six or seven." By Easter, 1944, the number had increased (whether by descent or by purchase does not appear) to twenty-five or thirty. "When the husband asked the wife to get rid of the cats and set up home together again and make a fresh start, the wife replied that she loved her cats and preferred them to her husband." The Court of Appeal upheld Cassels, J., in his decision that the wife's previous behaviour and her conduct "in preferring the cats to him and insisting on their intolerable [*sic*] presence in the house was a matrimonial offence amounting to constructive desertion."

With all respect to the learned lords justices, this attitude of mind seems a little intolerant. We have it on the authority of the Ancient Mariner that—

> "He prayeth best who loveth best
> All creatures, great and small";

it is nowhere laid down that one kind of creature is, *ipsa natura*, more worthy of love than another, and if a wife prefers the society of her cats to the *consortium* of her husband, this is, one would imagine, a matter of taste on which she is entitled to please herself.

Generalisations are notoriously dangerous, and all that the outsider can safely say is that a certain type of cat may be preferable to a certain type of husband. The two *genera*, from the wifely point of view, may appear to have a good deal in common. Both may on occasion exhibit a regrettable propensity for wandering abroad in the nocturnal hours in search of amorous adventure; both are in the habit of returning to the domestic hearth for refreshment and recreation. Both may show a tendency, when their hunger has been satisfied, to migrate to the most comfortable armchair, upholstered with the softest cushions, in the room; neither is averse, after the Sunday dinner or the evening meal, from relapsing into that state of dreamy reverie, of contemplative detachment, which can be so exasperating to a woman who has been engaged all day on dreary household tasks and wants to talk about the marvellous hat she saw last week in Harridge's shop window.

Nor has the attitude of the common law and equity been weighted less on the side of the cat than of the husband. Marriage imposes on the latter more common law liabilities than we have space here to enumerate, while equity has consistently taken so poor a view of his general character as to regard married women generally as in need of its special protection. The Married Women's Property Acts and the Law Reform Act of 1935 are but drops in the ocean, and the ordinary citizen is left to infer that husbands are regarded by the law as animals of the most dangerous kind.

Cats, on the other hand, have many legal privileges. They are of the class of animals which are presumed not to be of a dangerous disposition, and to which the doctrine of *scienter* applies (1 Dyer, 25*b*, pl. 162; 1 Vin. Abr. 234; *Mason* v. *Keeling* (1699), 1 Ld. Raym. 606). Their owners have been held exempt from liability to damages in *Clinton* v. *Lyons & Co., Ltd.* [1912] 3 K.B. 198; *Buckle* v. *Holmes* [1926] 2 K.B. 125 and other well-known cases. Protected thus strongly by the common law, it is not surprising that cats have heretofore been regarded as enjoying a natural habitat, almost by right, in the ordinary home, and as being entitled to behave there as they please.

The common law has merely reinforced and given legal sanction to a long-standing tradition. Every child in this country, in his first encounter with the printed word, has laboriously spelt out the succinct phrase THE CAT IS ON THE MAT—a statement which, lending itself to facile confirmation by visual observation, helps to train his critical faculty. As his education progresses the child learns to associate the doings of his own pet with the high adventures of those paragons of the species—the feline friend of Lord Mayor Sir Richard Whittington and Charles Perrault's Puss in Boots. In his later literary studies he will find many references, beginning with *The Owl and the Pussy Cat* of Edward Lear, whose famous cat Foss was his constant companion in real life. Nor must we forget the ill-fated Selima, the favourite of Thomas Gray, whose untimely death by drowning in a bowl of goldfish the poet mourned in a pathetic ode. Above all there is the Cheshire Cat of Lewis Carroll, which "vanished quite slowly, beginning with the end of the tail and ending with the grin, which remained some time after the rest of it had gone."

At a more advanced age the growing child will meet the cat at every turn of English idiom and metaphor. He will rejoice at its longevity—nine times the normal span—and grieve that care must kill it at the last; when in perplexity he will wait to see which way it jumps, and hiding a guilty secret he may inadvertently let it out of the bag. Indoors he will face the proverbial difficulty of swinging it in a narrow space; out of doors he will take shelter against a downpour in which it is accompanied by dogs. He fights like the Kilkenny breed, and he leads a cat-and-dog life with his younger brother.

Even after attaining the age for specialised education he will meet the cat in the most recondite researches. If he takes up with demonology he will find that a cat is indispensable as a familiar. If he applies himself to the religions of the Ancient World, he will be confronted with mummified cats which were regarded in their lifetime as incarnations of Bast, the cat-headed goddess of Egypt, whose worship goes back five milleniums. This in itself is sufficient indication of the superiority of the cat over many other forms of animal and human life; what was good enough for the oldest and longest-lived civilisation in history should be good enough for this degenerate age.

A. L. P.

BOOKS RECEIVED

Company Accounts under the Companies Act, 1948. Prepared by F. SEWELL BRAY, F.C.A., F.S.A.A., and H. BASIL SHEASBY, M.B.E., F.C.A., F.S.A.A., for the Research Committee of the Society of Incorporated Accountants and Auditors. 1949. pp. 31. London: Gee & Co. (Publishers), Ltd. 3s. 6d. net.

Current Law Guide No. 6: Compulsory Purchase and Compensation. By R. D. STEWART-BROWN, Barrister-at-Law. 1948. pp. vi and (with Index) 97. London: Sweet and Maxwell, Ltd.; Stevens & Sons, Ltd. 6s. 6d. net.

World Affairs. Vol. 3 (New Series). Editors: GEORGE W. KEETON and GEORG SCHWARZENBERGER. 1949. pp. 112. London: Stevens & Sons, Ltd. 2s. 6d. net.

Current Law Guide No. 2: Town and Country Planning Act, 1947. By R. L. DOBLE, M.A., Solicitor, Deputy Town Clerk, Metropolitan Borough of St. Marylebone, and H. MANN, M.B.E., LL.B., Solicitor, Senior Assistant to the Royal Borough of Kensington. 1948. pp. vii and (with Index) 120. London: Sweet & Maxwell, Ltd.; Stevens & Sons, Ltd. 6s. 6d. net.

Redgrave and Owner's Factories, Truck and Shops Acts. Second (Cumulative) Supplement to Sixteenth Edition. By JOHN THOMPSON, M.A., of the Middle Temple and the Northern Circuit, Barrister-at-Law, and HAROLD R. ROGERS, M.A., sometime His Majesty's Deputy Chief Inspector of Factories. 1949. pp. xii and 157. London: Butterworth & Co. (Publishers), Ltd. 7s. 6d. net.

REVIEW

The Finance Act, 1948. Reprinted from Butterworth's Annotated Legislation Service. By WILLIAM LINDSAY, M.A., of the Inner Temple, Barrister-at-Law. 1948. London: Butterworth & Co. (Publishers), Ltd. 15s. net.

The Finance Act, 1948, contains a number of provisions of great importance. The new schedule of rates of purchase tax and of entertainments duty on stage plays, the half rate of duty for motor vehicle licences, the pool betting duty and bookmakers' licence duty, are matters of concern to persons affected thereby. Of greater interest to legal practitioners are the special contribution, the taxing of small farmers by reference to profits from the year 1949-50 onwards, and the assessing of expenses allowances and benefits in kind to income tax. All sections of the Act are annotated in this work, which provides a valuable guide for those wrestling with its complexities. It is unfortunate that the preface states that only sur-tax payers who had an unearned income of more than £250 in the year 1947-48 are affected by the special contribution, for examination of the sections of the Act dealing with the matter reveals that, owing to the different methods in which total income is calculated for sur-tax purposes and for the purposes of the contribution, persons who were not sur-tax payers may nevertheless be liable to contribution. But a minor slip of this nature does not detract from the value of a comprehensive reference book produced so soon after the passing of the Act, on which the author is to be congratulated, particularly as he has had to venture into paths which have not been sign-posted by others.

CORRESPONDENCE

[The views expressed by our correspondents are not necessarily those of THE SOLICITORS' JOURNAL*]*

Legal Aid and Advice Bill

Sir,—The observations on the Bill which I would offer are these :—

(1) How is an applicant, for example a man injured in a road accident, to satisfy the local committee that he has a good case against the motorist until he has obtained statements from the material witnesses ? How can he obtain these before he is given a solicitor ? The solicitor's help is necessary to obtain the evidence on which he can satisfy the local committee, but the committee cannot appoint a solicitor until they are satisfied there is a good case. How can the advice centre deal with this when so often interviews, particularly with witnesses, have to be made away from the office ?

(2) In many quite sizable towns the bulk of the litigation work is shared by three or four firms. If they are serving on the local committee and grant a certificate they cannot, of course, act for the applicant, nor, having heard the applicant's case, would it be right for them to act against him. How then can the work be allotted ? What steps can be taken to see that no solicitor who serves on a committee is exposed to the embarrassment of being present when applications are heard for process against those who are clients of his partners ?

(3) Solicitors, like taxi drivers, will now be on the rank to be hired willy-nilly and will be compelled to take such cases on their panels as the committee allot to them. The client can choose his solicitor, but the solicitor cannot refuse to act for the client—quite a different rule from the medical scheme. Is not this the start of nationalisation of the profession ?

(4) My experience has been that the overwhelming proportion of running down claims are settled by negotiations. The insurance companies could give us the actual figures, but I doubt if 10 per cent. proceed to litigation. In negotiations, however, one must have the hidden sanction of the writ to be produced if progress is not made, and vastly different figures would result without it. The scheme should not be littered by having to investigate the 90 per cent. of those cases which are so settled or the work of the committee will be too hard. I feel that the scheme will be unworkable both from the cost to the taxpayer and from the labour to the profession unless much more vigorous provisions are inserted with regard to negotiating. A committee should not grant a certificate for process until satisfied that all reasonable steps have been taken to secure a settlement—otherwise each accident may result in a court case with costs of £100–£150 a side payable by some one, whether an assisted person, taxpayer or insurance company, and the latter by raising premiums will shift their share. The public welfare demands that there should also be a brake on the rapid initiation of matrimonial processes without full attempt first at reconciliation.

(5) I would suggest that an applicant on production of a simple certificate from his income tax inspector should be entitled to advice, negotiating and letter writing by a solicitor at a proportion of the standard fee, the proportion to be shown on the tax certificate and to depend on the applicant's income and family responsibilities, which information the tax inspector has now. We should then collect a proportion of the costs payable by the applicant from him and send in returns for the balance to the fund—very similar to the way the dental scheme works with the addition of the tax certificate necessary since Rushcliffe has an income barrier. If negotiations have failed then reference would be made to the local committee, and the solicitor's file would lessen the investigation labours by emphasising the salient points of the case and by exhibiting the witnesses' statements.

A. RAWLENCE.

Croydon.

Sir,—I should be grateful if I might be permitted to comment on the letter from the Honorary Secretary of the Peterborough and District Law Society [*ante*, p. 11], since it appears to me to lend force to a criticism of your learned contributor's observations which, in my opinion, based on an experience of over twelve years as a "Poor Man's Lawyer," is not justified.

I found myself whole-heartedly in agreement with your contributor's view that the activity of the legal advice centres should be extended beyond mere "oral" advice. It is my experience that it is perfectly possible to conduct negotiations with insurance companies on behalf of poor persons and to arrive at a satisfactory settlement without recourse to a writ. I think it is not unfair to draw the conclusion that an insurance company will almost always settle a claim where it is considered that it is validly founded and that no question of an extortionate demand is involved. The mere fact that the negotiations are conducted by an unpaid adviser conduces to a speedy settlement and my own files furnish very cogent evidence of this. While I cannot claim that recourse to litigation might not have produced more favourable settlements, I have never failed to be satisfied that the amounts recovered were satisfactory compensation for the injuries—the fact that a few pounds more might have been obtained thereby becomes irrelevant.

The major objection to a limitation to oral advice, however, is by no means concerned with actual negotiations in respect of matters capable of being litigated. There is a large range of matters where a single letter can achieve all that the applicant requires, e.g., claims for small debts ; remonstrances to fellow tenants ; reminders to husbands who are laggardly in paying their wives' allowances, and so forth.

It appears to me to be Gilbertian that to secure the writing of such a letter the applicant should need, first to apply to a legal advice centre ; then to fill in what I imagine will be a fairly elaborate form ; then to attend before a local committee ; then to submit to a means test conducted by a National Assistance officer, and, ultimately, to be referred to a firm of solicitors who will undertake the task. If ever a sledge-hammer was being utilised to crack a nut, this procedure is a classic instance.

It must follow that a large number of people who merely require modest assistance will be deterred by the administrative machinery, with the result that the introduction of the Bill will actually have the effect, in many cases, of diminishing the service which is even now available.

I cannot, I am afraid, follow the reasoning that to allow the advice centres to write letters would open the door for nationalisation. The whole structure of the present Bill makes it abundantly clear that any notion of nationalisation has been dismissed from the mind of the Government. I will not elaborate this point except to say that to read into this Bill a threat of nationalisation is something that I cannot at present at all comprehend.

A. GOODMAN.

London, W.C.1.

Registration and the Consolidation of Mortgages

Sir,—I have read the above article [92 SOL. J. 726] with interest and appreciate its ingenuity. I have, however, two objections to make to it.

In the first place, I think that some reference should have been made to the decision of the Court of Appeal in *Lewisham Borough Council* v. *Maloney* (1947), 91 SOL. J. 368. Although this case was concerned with the question of the registrability or otherwise of a right as a Land Charge Class D (iii) it does show that an undisclosed and unapparent right adverse to the owner of the land is not necessarily registrable.

Secondly, I do not agree that a right to consolidate mortgages is capable of being described as a general equitable charge. Class C is concerned with mortgages, charges or obligations affecting land, and, after itemising puisne mortgages and limited owners' charges, goes on to include "any other equitable charge," the obligations apparently being estate contracts. Surely, there must be something in the nature of a charge, as distinct from a mere equitable right to insist that a person who is seeking to avail himself of an equity will only be allowed to do so on the terms that he recognises the equity of the mortgagee to consolidate. Personally, I incline to the view that if the right to consolidate is registrable at all it is registrable as a Land Charge Class D (iii) as being a charge or obligation affecting land and coming within the words "... right or privilege ... affecting land" although I must admit that it is scarcely capable of being described as an equitable easement.

I think that the right to consolidate is not registrable under either Class C (iii) (there is no charge) or under Class D (iii) (there is no easement ; *Lewisham Borough Council* v. *Maloney*, *supra*).

T. RIGBY.

Preston.

NOTES OF CASES

HOUSE OF LORDS

ROAD TRAFFIC: PEDESTRIAN CROSSINGS

London Transport Executive *v.* Upson

Lord Porter, Lord Wright, Lord Uthwatt, Lord du Parcq and Lord Morton of Henryton. 9th December, 1948

Appeal from the Court of Appeal.

The plaintiff was knocked down by one of the defendants' omnibuses on a pedestrian crossing controlled from one side of Baker Street to the other by traffic lights. The plaintiff had to cross a distance of about 17 ft. 9 in. from the kerb to the safety island, and she had gone some 15 ft. when she was hit by the off-side front wing of one of the omnibuses. At the time a taxi-cab was drawn up close to the kerb with its wheels on the pedestrian crossing. The plaintiff's view of the south bound traffic in Baker Street was accordingly masked by the width of the taxi-cab—some 5 ft. When she was on the pedestrian crossing the view of the driver of the omnibus would be masked to the same extent. The trial judge accepted that the driver was going at 15 miles an hour, and held that that was a reasonable pace. The lights were in favour of the driver, and when the omnibus became stationary its front wheels were actually on the crossing. Humphreys, J., awarded the plaintiff £250 damages, and the Court of Appeal (Cohen and Asquith, L.JJ., Greene, M.R., dissenting) affirmed that decision. The defendants appealed. By reg. 3 of the Pedestrian Crossing Places (Traffic) Regulations, 1941: "The driver of every vehicle approaching a crossing shall, unless he can see that there is no foot passenger thereon, proceed at such a speed as to be able if necessary to stop before reaching such crossing." By reg. 5: "The driver of every vehicle at or approaching a crossing at a road intersection where traffic is for the time being controlled by a police constable or by light signals shall allow free and uninterrupted passage to every foot passenger who has started to go over the crossing before the driver receives a signal that he may proceed over the crossing." The House took time for consideration.

LORD PORTER said that reg. 5 did not override reg. 3 even at a controlled crossing. What, then, was the true effect of reg. 3? If it were taken in its most literal sense, vehicles would have to come to a dead stop at every pedestrian crossing for, however slowly they were going, someone might step in front of them at the last moment and be injured. Such a construction would make nonsense of the regulation. Two questions arose: (1) What was an approaching vehicle? (2) What was to be regarded as the moment at which the driver must be able to see that there was no foot passenger on the crossing? The safeguard to the driver did not come from a narrowed construction of the word "approaching," but from a correct appreciation of the meaning of the phrase "unless he could see that there was no foot passenger thereon." When must he so see? If so late a time as the very moment the driver reached the studs were taken, he would again be under the disability of having to slow down to a stop on each occasion that he intended to pass over a crossing. The regulations did not specify the distance between him and the crossing at which his ability to see must be tested. Therefore it must be at a reasonable distance. The driver here was guilty of a breach of the regulations because, had he had a clear view of the crossing uninterrupted by the presence of the taxi-cab, he could, going at the speed he was going, have pulled up in time. In other words, before he had reached the spot at which it was no longer incumbent on him to see that the crossing was clear his vision was hindered by the taxi-cab, and his inability to see whether there was or was not anyone on the crossing at that moment was the cause of the accident. The appeal should be dismissed.

The other noble lords agreed that the appeal failed.

APPEARANCES: *Fox-Andrews*, K.C., and *Armstrong-Jones* (*A. H. Grainger*), for the defendants; *Vick*, K.C., *Reuben* and *Aarvold* (*Bryan O'Connor & Co.*) for the plaintiff.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

COURT OF APPEAL

INCOME TAX: DEDUCTION OF EXPENSES

Peter Merchant, Ltd. *v.* Stedeford (Inspector of Taxes)

Tucker, Cohen and Asquith, L.JJ.
26th November, 1948

Appeal from Singleton, J. (92 SOL. J. 556).

The appellant company carried on the business of managing and supplying meals in the canteens of other persons. The contracts provided that the owners of the canteens should provide light equipment and utensils which the company were to maintain in their original quality and quantity. So long as it was possible the company made the necessary replacements each year. Deduction for income-tax purposes of the expense of so doing was conceded by the Crown to be permissible. From the outbreak of war in 1939 onwards replacement became impossible or impracticable owing to high prices. The company, in making their accounts up for the years in question, charged as expenses incurred in earning their profits the amounts representing at current prices their liability to replace when equipment should become available. General Commissioners of Income Tax upheld the Crown's contention that the sums thus reserved year by year were not debts incurred or payable in those years, but only contingent liabilities, which were not deductible. Singleton, J., upheld the Commissioners. He held that there was no accrued liability as the company contended: if the company did not fulfil their obligations under their contracts, there was a possibility of claims against them by the owners of canteens, but the company might be able to satisfy such claims for a much smaller sum than they had reserved through the material years if the conditions with regard to purchasing equipment improved. The company now appealed.

TUCKER, L.J.—COHEN and ASQUITH, L.JJ., agreeing—said that the facts showed that the true liability in question on the company was a contingent one only. The decision of Singleton, J., upholding the General Commissioners was correct. Appeal dismissed.

APPEARANCES: *Grant*, K.C., and *Heyworth Talbot* (*Bentleys, Stokes & Lowless*); *Scrimgeour*, K.C., and *Hills* (*Solicitor of Inland Revenue*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

NEGLIGENCE: THEFT FROM HOTEL BEDROOM

Olley *v.* Marlborough Court, Ltd.

Bucknill, Singleton and Denning, L.JJ. 3rd December, 1948

Appeal from Oliver, J. (92 SOL. J. 411).

The plaintiff, who was staying in the defendants' hotel, left her bedroom one morning, hung the key on its appropriate hook on the keyboard in the reception office, and went out of the hotel. On her return in the afternoon, she found that property of hers, principally furs, had been stolen from her room. A fellow guest stated in evidence that he had seen a strange man enter the hotel carrying nothing and later leave it carrying a suitcase. He was not observed by the porter on duty who was then cleaning a bust at the foot of the staircase, and the defendants called neither the porter nor the clerk on duty in the reception office at the time to give evidence. The notice required by the Innkeepers Act, 1878, was prominently exhibited in the entrance hall of the hotel, stating the limitations on the defendants' liabilities for loss of or injury to guests' property. In the plaintiff's bedroom there was a notice stating "the proprietors will not hold themselves responsible for articles lost or stolen unless handed to the manageress for safe custody . . ." In the plaintiff's action against the defendants for damages, Oliver, J., held the defendants liable on the grounds (*a*) that they were negligent in keeping the keyboard in such a position that a stranger entering the hotel had easy access to it, and (*b*) that the notice in the bedroom was ambiguous and did not protect the defendants. The defendants appealed.

BUCKNILL, L.J., said that the defendants were guilty of negligence, but that that negligence consisted not in keeping the keyboard where it was but in their failure, by their servants on duty, to keep a proper watch on it. The plaintiff was not guilty of contributory negligence in placing her key on the board, as she was entitled to expect that a reasonable watch would be kept on it. The notice in the bedroom did not operate to protect the defendants, as it was to be construed merely as a general statement similar in meaning to the notice under the Innkeepers Act exhibited in the entrance hall, namely, that the defendants were not to be held liable for loss in the absence of negligence on their part.

SINGLETON, L.J., agreeing, said, that, in the absence of evidence that the plaintiff had read the notice in her bedroom before agreeing to become a guest of the hotel, there was no evidence that that notice ever formed part of the contract between the parties.

DENNING, L.J., agreeing, said that notices exhibited in hotel bedrooms did not of themselves make a contract, for a guest as a rule did not see them until after he had been accepted as a guest. Whether the hotel in question was a common inn, or

a private hotel, or if was uncertain which of the two it was, a notice in the terms of that in question would exempt the hotel proprietors from liability as insurers but not from liability for negligence. Appeal dismissed.

APPEARANCES: *Berryman*, K.C., *Quass* and *Dingle Foot* (*Hair & Co.*); *Glyn Jones*, K.C., *G. G. Baker* (*Gardiner & Co.*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

TOWN AND COUNTRY PLANNING: INTERIM DEVELOPMENT: AGREEMENT RESTRICTING USE OF LAND: REVOCATION

Ransom & Luck, Ltd. *v.* Surbiton Borough Council

Lord Greene, M.R., Somervell, L.J., and Wynn Parry, J. 16th December, 1948

Appeal from Romer, J.

The defendant council, which was a planning authority and interim development authority under the Town and Country Planning Acts, had passed a resolution in pursuance of s. 6 of the Town and Country Planning Act, 1932, to prepare a scheme, and the Minister had made an interim development order under s. 10. The plaintiff company, which owned land in the development area, on 19th May, 1939, entered into two agreements under seal with the council whereby the latter agreed that the company might develop the land by erecting a certain number of dwelling-houses, shops and business premises there, subject to restrictions set out in the agreements. These agreements were concluded under s. 34 of the Act of 1932, which provided that "where any person is willing to agree with any such authority . . . that his land . . . shall . . . be made subject . . . to conditions restricting the planning, development or use thereof in any manner in which those matters might be dealt with by or under a scheme, the authority may, if they think fit, enter into an agreement with him to that effect, and shall have power to enforce the agreement against persons deriving title under him in the like manner and to the like extent as if the authority were possessed of . . . adjacent land and as if the agreement had been entered into for the benefit of that adjacent land." In 1944 the Greater London Plan, prepared by Professor Sir Patrick Abercrombie, was published, and in 1946 the council refused permission to develop the company's land in accordance with the agreements of 19th May, 1939, on the ground that the proposed development would contravene the proposals of the Greater London Plan. On 29th July, 1946, the council decided that, in pursuance of its power under s. 4 of the Town and Country Planning (Interim Development) Act, 1943, and subject to the consent of the Minister, the permission for development granted in the agreements of 19th May, 1939, should be revoked. The company alleged that the council had committed a breach of the agreements of 19th May, 1939, and claimed damages. Romer, J., dismissed the action ([1948] 1 Ch. 369).

LORD GREENE, M.R., said that the decision depended on the construction and effect of s. 34 of the Act of 1932. If the contention of the company was correct, the effect of an interim development agreement concluded under that section would be that the planning authority bargained away for the future its statutory powers of planning and altering its plans before a scheme was final and complete. That was not the meaning of the section, which was a section of limited application and merely enabled local authorities to accept restrictions relating to land offered to it by a landowner although normally such restrictions under the well-known doctrine of restrictive covenants could only be accepted by the owner of adjoining land. The council was, therefore, at liberty to avail itself of the powers given by s. 4 of the Act of 1943 and, subject to the consent of the Minister, could revoke the permission granted in the agreements of 1939. *Att.-Gen.* v. *Barnes Corporation and Ranelagh Club, Ltd.* [1939] Ch. 110 distinguished.

SOMERVELL, L.J., and WYNN PARRY, J., gave concurring judgments.

Appeal dismissed.

APPEARANCES: *Eric H. Blain* and *Peter Boydell* (*Bennett and Bennett*); *A. Capewell*, K.C., and *Wilfrid M. Hunt* (*Lees & Co.*, for *R. H. Wright*, Town Clerk, Surbiton).

[Reported by CLIVE M. SCHMITTHOFF, Esq., Barrister-at-Law.]

CHANCERY DIVISION

EASEMENT: RIGHT OF WAY: MEANING OF "CART": SAND LORRIES

Kain *v.* Norfolk and E. Baker (Hauliers) Ltd.

Jenkins, J. 8th December, 1948

By a conveyance dated 13th February, 1919, the plaintiff's predecessor in title granted the first defendant, his heirs, executors and assigns, and his and their tenants, being owners or occupiers of the adjoining land, a right of way. The grant provided that the first defendant was entitled to exercise that right "with or without horses, carts and agricultural machines and implements." On 26th April, 1947, the first defendant sold a large quantity of sand to the second defendants, who collected the sand by 3-ton lorries, four to eight of which came every day, including Sunday. The plaintiff complained that that user of the right of way was excessive. He contended that the user was limited to horse-drawn vehicles as opposed to motor vehicles and referred, in this connection, to another clause in the conveyance of 13th February, 1919, whereby the first defendant was granted another right of way, viz., the right to use a footpath "without horses, carts and carriages." The term "carriages" was not used in the grant in issue.

JENKINS, J., said that a cart, in the meaning of the grant, was primarily a vehicle adapted to carry materials, goods and so forth, possibly in contradistinction to a vehicle adapted for carrying passengers, the particular mode of propulsion of the cart or vehicle not being relevant for the present purpose. The grant included the right of carting loads, as well as leading horses, along the way and as well as bringing agricultural implements and machines along the way. The plaintiff had rightly admitted that the user was not limited to purposes connected with the dominant tenement as agricultural land. It followed that no excessive user of the way was involved by the second defendants as licensees of the first defendant when collecting the sand in 3-ton lorries. Observations of Peterson, J., in *Att.-Gen.* v. *Hodgson* [1922] 2 Ch. 429, at p. 437, followed. *White* v. *Grand Hotel, Eastbourne, Ltd.* [1913] 1 Ch. 113; *Taylor* v. *Goodwin* (1879), 4 Q.B.D. 228; *Danby* v. *Hunter* (1879), 5 Q.B.D. 20; *Lock* v. *Abercester, Ltd.* [1939] Ch. 861; *Cannon* v. *Villars* (1878), 8 Ch. D. 415, considered. Action dismissed.

APPEARANCES: *Lightman* (*Attwater & Liell*, for *H. J. Smith*, Braintree); *Milner Holland*, K.C., and *C. A. Morgan Blake* (*G. Howard & Co.*, for *Holmes & Hills*, Braintree).

[Reported by CLIVE M. SCHMITTHOFF, Esq., Barrister-at-Law.]

KING'S BENCH DIVISION

ELECTRICITY: HIGH-TENSION CABLE PASSING NEAR TREE

Buckland *v.* Guildford Gas Light & Coke Co.

Morris, J. 25th November, 1948

Action.

The defendant company, in pursuance of statutory powers, had suspended a high-tension electricity cable, carrying 11,000 volts, across a field, where it passed some two feet above an oak tree which could easily be climbed. The tree stood about midway between two of the poles on which the cable was supported, and a danger notice was affixed to each pole. No such notice was exhibited on or near the tree. By reg. 4 of the Overhead Line Regulations, 1928, the defendants were required to render the cable inaccessible to any person without the use of a ladder. In the summer of 1947 the plaintiff's infant daughter entered the field in question with other children from a public footpath along which they were in the habit of passing. The children had not been permitted to enter that field, but there was no evidence that the owner or the tenant of it had forbidden them to do so. The plaintiff's daughter climbed the oak tree in question, touched one of the cables and was immediately killed. Her father brought this action in respect of her death. (*Cur. adv. vult.*)

MORRIS, J., said that the principle applicable was laid down in *Donoghue* v. *Stevenson* [1932] A.C. 562, at p. 580, by Lord Atkin, cited with approval in *Hay* v. *Young* [1943] A.C. 92, at pp. 101 and 116-7. It had not been proved that the child was a trespasser, but whether she was or not was not significant in relation to the question whether the defendants were under a duty to safeguard children from so deadly a thing as a high-tension cable. The child was a "neighbour" of the defendants within the meaning of Lord Atkin, and they ought reasonably to have contemplated such a child as likely to be affected by their bringing the cable so near to a tree as to constitute a hidden and deadly trap. They should have known that an easily climbed tree might be an allurement to a child. Judgment for the plaintiff for £519.

APPEARANCES: *Astell Burt* (*J. R. Cort Bathurst*); *Melford Stevenson*, K.C., and *Harcourt Barrington* (*Blount, Petre & Co.*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

DIVISIONAL COURT

FOOD AND DRUGS: INSUFFICIENT CERTIFICATE

Gammack *v.* Jackson Wyness, Ltd.

Lord Goddard, C.J., Hilbery and Birkett, JJ.
24th November, 1948

Case Stated by a metropolitan magistrate.

An information was preferred charging the defendants with contravening s. 3 (1) of the Food and Drugs Act, 1938, by selling to the prejudice of the purchaser non-brewed vinegar which was not of the quality demanded. The only evidence about quality was a certificate by the public analyst stating that: "I have analysed" the sample "and . . . am of opinion that the constituents of the sample included . . . acetic acid 3·54 per cent." and "that this sample is 11·5 per cent. deficient in acetic acid." The magistrate dismissed the information, holding that the certificate was too vague in that it did not state the requisite standard, no standard for the acetic-acid content of non-brewed vinegar being prescribed by law. The prosecutor appealed.

LORD GODDARD, C.J.—HILBERY and BIRKETT, JJ., agreeing—said that such a certificate must show on its face what offence it was alleged to prove. A standard was required in order to show a deficiency. It was insufficient that a mathematical calculation based on the certificate would show that the analyst regarded 4 per cent. as the proper acetic-acid content. A court should not be called on to do sums in order to ascertain what offence was charged. Such certificates should be intelligible to the humble and unintelligent persons to whom they were often given. The information was rightly dismissed. Appeal dismissed.

APPEARANCES: *R. A. Robinson* (*Cyril F. Thatcher*); *Landau* (*Philip L. Ross*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

PROBATE, DIVORCE AND ADMIRALTY

CRUELTY: HUSBAND'S FITS OF DEPRESSION

Lauder *v.* Lauder

Lord Merriman, P., Singleton, L.J., and Pearce, J.
25th November, 1948

Appeal from Ormerod, J.

The appellant and the respondent, his wife, were married in 1942. From the early days of the marriage the husband had been subject to fits of depression lasting for hours or even days, and he would at such times ignore his wife even in the presence of third parties. He subjected her to domineering treatment when he was not in such moods, and the wife submitted to his domineering for fear of bringing on one of the moods. On one occasion the husband had forced her to cycle over a mile to church though she was pregnant and unwell, and she fainted as a result of the journey. There was another similar incident. Medical evidence was given that by September, 1946, she was reduced to a state of serious emotional disturbance and physical ill-health. No other cruelty was alleged. Ormerod, J., found that the wife's mental and physical ill-health was attributable to the husband's conduct, and granted her a decree *nisi* on the ground of cruelty. The husband appealed.

LORD MERRIMAN, P.—PEARCE, J., agreeing—said that the proper approach to the matter was that adopted by Phillimore, L.J., in *Moss* v. *Moss* [1916] P. 155, where, at p. 162, he re-affirmed the principle that there must be actual or apprehended injury to health, which included mental health. In *Mytton* v. *Mytton* (1886), 11 P.D. 141, a persistent course of harsh, irritating conduct unaccompanied by actual violence but endangering the petitioner's health was held to amount to legal cruelty. The facts found here justified Ormerod, J., in granting a decree.

SINGLETON, L.J., dissenting, said that he could not understand how the fact that a man was suffering from periodical fits of depression could amount to cruelty. This husband had never raised his hand to his wife or spoken an unkind word to her. No case had been cited which would warrant the granting of a decree here. In *Horton* v. *Horton* [1940] P. 187, at p. 193, Bucknill, J., said that mere conduct causing injury to health was not enough. This husband had not been guilty of a deliberate course of "sending his wife to Coventry," which might well have been legal cruelty. The word cruelty was not intended by the Legislature to include such conduct as that of which this wife complained. Appeal dismissed.

APPEARANCES: *Turner*, K.C., and *N. Parkes* (*Wedlake, Letts & Birds*, for *Gidley, Wilcocks & Maddock*, Plymouth); *Sir Charles Doughty*, K.C., and *J. G. K. Sheldon* (*Baylis, Pearce and Co.*, for *Stevens & Stevens*, Farnham).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

NULLITY: ARTIFICIAL INSEMINATION

L. *v.* L.

Pearce, J. 30th November, 1948

Wife's undefended petition for nullity.

The parties were married in 1942, but the marriage was never consummated owing, the wife alleged, to the husband's incapacity, which charge he formally denied but did not call evidence to rebut. By the end of 1945, after all efforts by the husband to effect a cure had failed, the wife was aware that she had grounds for a decree of nullity. In 1947, being anxious to have a child, the wife submitted to artificial insemination with her husband's seed. Some two months later, while she was still unaware that she had become pregnant from the artificial insemination, she decided to end the marriage, and left her husband. In due course she gave birth to a child. It was argued for the husband that the petition should fail for want of sincerity and because the wife by submitting to artificial insemination leading to conception of her husband's child had approbated the marriage.

PEARCE, J., found that the marriage had never been consummated, and that the wife had become sickened by her efforts to stimulate an impotent spouse. It was unfortunate that the break should have occurred after the wife had become pregnant, with a consequent slight chance that the birth might have resolved the husband's psychological difficulty. The wife admitted two motives for conceiving the child: maternal desire and the hope that the ability to have natural intercourse would result. The former motive was not dominant over the latter, and the decree did not fail for insincerity. Approbation was a question of degree. The evidence showed that the wife had never intended to approbate an abnormal marriage. She had always made it clear that she wanted a normal one. Conception of the child was not to be regarded as approbation of the marriage when the dominant motive behind it was to produce normality of sex relations in the marriage. There was no authority for the proposition that public policy necessitated the wife's being held estopped or to have approbated the marriage. The stigma of illegitimacy was less serious than it used to be; the few who knew of the illegitimacy of the child would probably also know the facts, in which there was nothing reflecting dishonour on parents or child. Decree *nisi* of nullity.

APPEARANCES: *James Stirling* (*Withers & Co.*); *Robert Hughes* (*Marsden, Burnett & Co.*, for *Faithfull, Gardner & Stanier*, Winchester).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

COURT OF CRIMINAL APPEAL

RECEIVING: GOODS DELIVERED IN RECEIVER'S ABSENCE

R. *v.* Fallows

Lord Goddard, C.J., Hilbery and Birkett, JJ.
29th November, 1948

Appeal from conviction.

The appellant, a general merchant, in April, 1948, bought fifteen wheelbarrows from one Richards, having earlier in the year bought another lot of forty barrows from him. The appellant and Richards were charged on two counts of an indictment with receiving the fifteen and the forty barrows respectively. Richards pleaded guilty, and the appellant was convicted. When the fifteen barrows were delivered at his premises he was away for the day. He was convicted notwithstanding that at the trial he produced for the first time a book, which had since April been in the custody of his solicitors, showing that he had bought all the barrows from Richards in a regular way. He appealed.

LORD GODDARD, C.J., giving the judgment of the court, said that there was no evidence on which the conviction of the appellant could be supported, and it could not, therefore, stand. His counsel had also relied on *R.* v. *Merriman* [1907] Vict. L.R. 1, referred to in Archbold (31st ed., p. 725 (*a*)). That case did not bind the court, and they (their lordships) were not prepared to follow it. There was abundant evidence there of felonious intent notwithstanding that the goods in question had been delivered to the appellant's premises in his absence. If that decision were right a receiver could easily escape the charge of guilty knowledge by having goods delivered to his premises in his absence. The court would make no order as to costs in the appellant's favour, because the book which proved his innocence should have been produced before the trial. It had not been unreasonable to charge him. Appeal allowed.

APPEARANCES: *Cassiwell*, K.C., and *C. E. B. Roberts* (*Mackover and Co.*); *Sebag Shaw* (*The Solicitor, Metropolitan Police*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

SURVEY OF THE WEEK

1. *Statutes*

NATIONAL SERVICE (AMENDMENT) ACT, 1948 (12 & 13 Geo. 6, c. 6)

This Act substitutes the period of eighteen months' whole-time service in the armed forces for that of twelve months provided by the National Service Act, 1948.

2. *House of Commons Bills*

AGRICULTURE (MISCELLANEOUS PROVISIONS) BILL

This Bill enables the Minister of Agriculture and Fisheries to require compensation for growing crops, produce, seeds sown, "acts of husbandry," etc., from the person to whom the Minister gives up possession of land which was taken under the Defence Regulations for agricultural purposes. The Bill increases the maximum penalties for introducing the colorado beetle into the United Kingdom. It also contains a number of other provisions of interest to the farming community.

3. *Statutory Instruments*

EMERGENCY LAWS (CONTINUANCE) ORDER, 1948 (S.I. 1948 No. 2794)

By this Order employers are relieved for a further period, i.e., until 31st December, 1949, from their obligation to restore pre-war restrictive trade practices as provided in the Restoration of Pre-war Trade Practices Act, 1942. The Act is also thereby extended to cover new undertakings started in 1949, and any new departures from pre-war trade practices which occur in 1949.

DISPOSAL OF VALUELESS DOCUMENTS (LAW OFFICERS' DEPARTMENT AND IMPERIAL WAR MUSEUM) ORDER, 1948 (S.I. 1948 No. 2795)

This Order extends to the Law Officers' Department and the Imperial War Museum rules made by the Master of the Rolls and his predecessors for the disposal of documents which are not considered to be of sufficient public value to justify their preservation.

CITIZENSHIP LAW (CANADA) ORDER, 1948 (S.I. 1948 No. 2779)

CITIZENSHIP LAW (CEYLON) ORDER, 1948 (S.I. 1948 No. 2780)

By these Orders the Home Secretary, by virtue of powers conferred on him by the British Nationality Act, 1948, declares that the Canadian Citizenship Act and the Citizenship Act No. 18 of Ceylon are "enactments making provision for citizenship" of Canada and Ceylon, and came into force on 1st January, 1947, and 1st January, 1949, respectively.

CITIZENSHIP LAW (NEW ZEALAND) ORDER, 1949 (S.I. 1949 No. 7)

By this Order the New Zealand Citizenship Act, 1948 (1948 No. 15) is declared by the Home Secretary, in accordance with the provisions of s. 32 (8) of the British Nationality Act, 1948, to be an enactment making provision for citizenship of New Zealand, and to have taken effect on 1st January, 1949.

REGISTRATION OF BIRTHS AND DEATHS (CONSULAR OFFICERS) REGULATIONS, 1948 (S.I. 1948 No. 2837)

These regulations prescribe forms and rules for the registration of births and deaths by consular officers as provided for in the British Nationality Act, 1948.

NORTHERN RHODESIA NATURALIZATION ORDERS IN COUNCIL (REVOCATION) ORDER IN COUNCIL, 1948 (S.I. 1948 No. 2793)

Formerly aliens resident in Northern Rhodesia could only obtain "local" certificates of naturalization. Now, under the British Nationality Act, 1948, the Governor can grant imperial certificates of naturalization, and the Orders in Council formerly in force are therefore revoked.

TRADING WITH THE ENEMY (AUTHORIZATION) (JAPAN) (No. 2) ORDER, 1948 (S.I. 1948 No. 2812)

TRADING WITH THE ENEMY (CUSTODIAN) (AMENDMENT) (JAPAN) ORDER, 1948 (S.I. 1948 No. 2814)

TRADING WITH THE ENEMY (TRANSFER OF NEGOTIABLE INSTRUMENTS ETC.) (JAPAN) ORDER, 1948 (S.I. 1948 No. 2813)

These Orders authorise applications for patents, trade marks, registration of utility models, etc., in Japan and allow subsequent dealings therein. They remove the Board of Trade and Custodian control over money and property accruing in consequence of such dealings, and sanction the transfer and assignment of negotiable instruments, securities, etc., in consequence thereof.

CIVIL AVIATION (APPLICATION OF ENACTMENTS) ORDER, 1948 (S.I. 1948 No. 2790)

Powers formerly exercised by the Secretary of State for Air relating to the management and use of land and power to make byelaws relating thereto, are transferred by this Order to the Minister of Civil Aviation.

NATIONAL HEALTH SERVICE (GENERAL DENTAL SERVICES) FEES (AMENDMENT No. 2) REGULATIONS, 1948 (S.I. 1948 No. 2803)

These regulations make provision for a reduction of 50 per cent. in dental fees over £4,800 per annum gross. In a circular the Minister of Health points out that that figure allows the full rate of payment for a working week considerably longer than that which the Spens Committee considered could be efficiently worked, and that 20 per cent. of dentists are estimated to be earning over £400 a month gross.

INDUSTRIAL ASSURANCE (RETURNS) REGULATIONS, 1948 (S.I. 1948 No. 2771)

INDUSTRIAL ASSURANCE (PREMIUM RECEIPT BOOKS) REGULATIONS, 1948 (S.I. 1948 No. 2770)

4. *Miscellaneous Government Publications*

SELECTED DECISIONS given by the Commissioner on Claims for Sickness Benefit during the period 3rd October, 1948, to 15th November, 1948. (Ministry of National Insurance Pamphlet S/2).

NATURALIZATION FORMS (HOME OFFICE)

A.1.—Application by Alien for Certificate of Naturalization.

B.1.—Application by British Protected Person for Certificate of Naturalization.

R.1.—Application for registration as a Citizen of the United Kingdom and Colonies under s. 6 (1) of the British Nationality Act, 1948, by an Adult British Subject or Citizen of Eire on ground of residence in United Kingdom, Channel Islands, Isle of Man, a colony, protectorate, or protected State to which s. 8 (1) of the Act has been applied or a United Kingdom Trust Territory, or on ground of Crown Service under H.M. Government in the United Kingdom.

R.2.—Application for registration as a citizen of the United Kingdom and Colonies under s. 6 (2) of the Act made by a woman who has been married to a citizen of the United Kingdom and Colonies. [For use by women who are British subjects but not citizens of the United Kingdom and Colonies.]

R.3.—Do. [For use by women who are British protected persons or aliens.]

TOWN AND COUNTRY PLANNING (Development Plans) Regulations, 1948 (Ministry of Town and Country Planning Circular No. 59)

This Circular is addressed to local authorities only, and is designed to assist them in complying with their obligation under the Town and Country Planning Act, 1947, and regulations made thereunder, to draw up and submit development plans within three years of the Appointed Day. The Circular contains a general statement of what this obligation comprises, notes upon the different types of map which are required, and a guide to their form and contents. It also contains a section dealing with various matters arising out of this obligation on which it is felt that the authorities will be assisted by knowing the Minister's views.

5. *Other Publications on sale at H.M. Stationery Office*

TRIAL OF MAJOR WAR CRIMINALS before the International Tribunal at Nuremberg. 14th November, 1945, to 1st October, 1946. Vol. XXVII. Documents and other material evidence.

Wills and Bequests

Mr. John Esam, solicitor, of Kelham and Newark-on-Trent, former president of the Nottingham Law Society, left £22,320, net personalty £21,656.

Mr. J. C. Cantley, solicitor, of St. Andrews, left £186,007.

Mr. J. H. Downey, retired solicitor, of St. Leonards-on-Sea, left £195,258.

NOTES AND NEWS

Professional Announcements

Mr. K. C. HORTON, of Messrs. K. C. HORTON & PAGE, solicitors, of Ilkeston, has taken into partnership Mr. SAMUEL CLIFFORD PAGE, solicitor, of Ilkeston. The name of the firm remains unchanged.

Mr. J. AINSWORTH FREEMAN, of Messrs. WILLIAMS & FREEMAN, solicitors, of 21 Stratford Road, Shirley, Birmingham, has taken into partnership Mr. L. F. WILLIAMS, solicitor. The address of the firm remains unchanged.

Honours and Appointments

The Lord Chancellor has appointed Mr. ROLAND GILBERT BEDWORTH Assistant Registrar at Birmingham County Court. He was admitted in 1921.

Lt.-Col. C. E. J. FREER, solicitor, of Leicester, has been appointed to succeed Lord Hazlerigg, as Chairman of Leicester Quarter Sessions. He was admitted in 1924.

The Lords Commissioners of the Treasury have appointed Mr. CHARLES HAROLD CHORLEY to be one of their Parliamentary Counsel. Mr. Chorley was called to the Bar in 1934 and was assistant to the Parliamentary Counsel.

Mr. WILFRID DUKE COLERIDGE has been appointed Chief Clerk of the Central Criminal Court. Called by the Middle Temple in 1914, he was formerly Clerk of Arraigns at the Central Criminal Court.

Mr. R. L. C. WARD, LL.B., D.P.A., has been appointed Assistant Solicitor to the Nottinghamshire County Council.

Personal Notes

Sir Douglas T. Garrett, a former President of The Law Society, has been appointed by the Board of Trade as inspector to investigate the affairs of A. Reyrolle & Co., Ltd., electrical engineers, of Hebburn-on-Tyne.

Mr. G. M. G. Mitchell, solicitor, of Shrewsbury, is retiring this month. Mr. Mitchell, who was admitted iu 1897, will continue to act as Deputy Coroner for the Borough of Shrewsbury and Ford district.

At the age of ninety, Mr. Edmund Alliston Wingrove continues to act as managing clerk and cashier to the firm of Bailey Gibson & Co., solicitors, of Beaconsfield.

Mr. J. Kerfoot Roberts, solicitor, of Holywell, has completed forty years' service as clerk to Holywell Urban District Council. He was admitted in 1907.

Major H. C. C. Batten, D.S.O., Town Clerk of Yeovil, led the Cattistock Hunt at a Dorchester Meet recently.

Mr. Ambrose Appelbe, solicitor, of Lincoln's Inn, is a member of the council of Youth Travel Ships, Ltd., a company whose objects are "to improve the education and health of young persons and others of limited means by providing facilities for sea, land and air travel, and for sojourns in other countries."

Miscellaneous

The Lord Chancellor has ordered that His Honour Judge Blagden shall sit as Additional Judge at the Marylebone County Court as from 5th January.

The Law Society announces that 321 of the 512 candidates for the Society's final examination held on 8th, 9th and 10th November, were successful. 248 out of 429 candidates were successful at the Trust Accounts and Bookkeeping examination held on 12th November, 1948.

SOCIETIES

Mr. A. North Hickley (London) has been elected Chairman of the SOLICITORS BENEVOLENT ASSOCIATION for the current year, and Mr. G. S. Blaker (Henley-on-Thames), Vice-Chairman. The Association's work is already known to and supported by many members of the profession. Others are asked to write to the Secretary, at 12 Cliffords Inn, E.C.4, for a copy of the last annual report and accounts and a form of application of membership.

THE UNION SOCIETY OF LONDON, meetings of which are held in the Barristers' Refreshment Room, Lincoln's Inn, at 7.45 p.m., announce the following subjects for debate in January, 1949: Wednesday, 12th January, "That this House approves the draft agreement setting up an international Ruhr Authority"; Wednesday, 19th January, joint debate with the Hardwicke Society, "That the manners and morals of the younger generation are scandalous"—ladies will be welcome visitors at this debate; Wednesday, 26th January, "That U.N.O. is a failure and should be dissolved."

PRESTON LAW DEBATING SOCIETY.—A copy of the 1830 Year Book of the Preston Law Debating Society (then known as the Preston Leguleian Society—instituted in October, 1787) was recently found in a Preston solicitor's office. It has now been presented to the present Society, and one of the joint hon. secretaries, Mr. D. C. Jackson, has allowed our representative to look into its pages.

This well-preserved old book contains lists of rules and members dating from the Society's institution. The latest amended list of names is dated 1834, and attached to them in this and the other lists is an indication whether the member resigned or was expelled!

The membership, as at present, was divided into two classes—honorary members (attorneys or those who had served a full clerkship) and ordinary members (persons who were, or had been, under articles of clerkship to lawyers).

The remarkably comprehensive rules contain many interesting details, covering not only the members but particular instructions for the president, vice-president, and treasurer.

It is laid down that each member shall be bound by, and pay, the fines specified in a table which covers two and a half pages. The highest fine is 2s. 6d. It was imposed on "the proposer of an adjourned meeting for neglecting to give immediate notice thereof to the door keeper."

Fines were also fixed for "coming to the meeting after the appointed hour" 3d.; for being "absent during the discussion of the case and queries, the first meeting 3d. every successive meeting 1s."

Provision was also made to fine any member 1s. 6d. for "divulging anything calculated to injure the Society." There were also penalties intended to discourage departure from a meeting before the business was finished; and also to prevent any lack of interest or failure to take an active part in the general affairs and debates of the Society. Even the treasurer could be fined 1s. for not entering in his book every new rule passed by the Society, within fourteen days from its passing. And there were several ways of fining the vice-president for various kinds of neglect to discharge his duties faithfully.

OBITUARY

MR. F. N. CRESWICK

Mr. Francis Nathaniel Creswick, solicitor, died at Chippenham, aged seventy-three. Mr. Creswick was Registrar of County Courts at Chippenham, Bath, Frome, Trowbridge, Warminster and Wells.

MR. A. H. HEPBURN

Mr. A. H. Hepburn, solicitor, of Peckham, died recently aged sixty-four. He was admitted in 1929.

MR. G. L. K. SHIACH

Mr. Gordon L. K. Shiach, solicitor, of Elgin, died on 30th December, 1948.

MR. T. A. H. SMITH

Mr. Thomas Alfred Howes Smith, solicitor, of Eckington, Sheffield, died on 1st January. He was admitted in 1901.

MR. T. S. STEEL

Mr. Thomas S. Steel, founder of the firm of Steels, solicitors, of Warrington, died recently. He was admitted in 1898.

"THE SOLICITORS' JOURNAL"

Editorial, Publishing and Advertisement Offices: 88–90, Chancery Lane, London, W.C.2. Telephone: Holborn 1403.

Annual Subscription: £3 inclusive (payable yearly, half-yearly or quarterly in advance).

Advertisements must be received first post Tuesday.

Contributions are cordially invited and should be accompanied by the name and address of the author (not necessarily for publication).